THE HONORABLE JOHN BRIDGES 1 2 3 4 5 6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF CHELAN 7 Timothy Borders, et al., 8 No. 05-2-00027-3 Petitioners, 9 NOTE FOR MOTION ON V. 10 SPECIAL SETTING King County and Dean Logan, its Director of 11 Records, Elections and Licensing Services, et al., 12 Respondents 13 TO: THE CLERK OF THE COURT 14 15 AND TO: ALL PARTIES AND COUNSEL OF RECORD 16 NOTE FOR SPECIAL SETTING: Please note that this matter has been set before the 17 Honorable John E. Bridges on May 19, 2005, without oral argument. If the Court prefers 18 to take argument on the motions, Petitioners are available for a telephonic hearing at the 19 Court's convenience. 20 NATURE OF HEARING: Petitioners' Motion to Shorten Time for Motion to Strike and 21 Motion to Compel; Petitioners' Motion to Strike WSDCC's Rebuttal Witness List; and 22 23 Petitioners' Motion to Compel. 24 //25 III26 //27 Davis Wright Tremaine LLP

NOTE FOR MOTION - 1 SEA 1647712v1 55441-4

LAW OFFICES 2600 Century Square + 1501 Fourth Avenue Seattle, Washington 98101-1688 (206) 622-3150 + Fax: (206) 628-7699 Dated this <u>My</u> day of May, 2005.

DAVIS WRIGHT TREMAINE LLP

Attorneys for Petitioners

Harry J. F. Korrell

WSBA #23173 Robert J. Maguire WSBA #29909

NOTE FOR MOTION - 2 SEA 1647712v1 55441-4 Davis Wright Tremaine LLP LAW OFFICES 260° Century Square · 1501 Fourth Avenue Seattle, Washington 98101-1588 (206) 622-3150 · Fax: (206) 628-7699

THE HONORABLE JOHN BRIDGES

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF CHELAN

Timothy Borders, Thomas Canterbury, Tom
Huff, Margie Ferris, Paul Elvig, Edward
Monaghan, and Christopher Vance, Washington
residents and electors, and the Rossi for
Governor Campaign, a candidate committee,

Petitioners.

v.

King County and Dean Logan, its Director of Records, Elections and Licensing Services, et al.,)

Respondents.

and

Washington State Democratic Central Committee,

Intervenor-Respondent,

and

Libertarian Party of Washington State et al.,

Intervenor-Respondents.

No. 05-2-00027-3

PETITIONERS' MOTION TO SHORTEN TIME FOR MOTION TO STRIKE AND MOTION TO COMPEL

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MOTION- 1 SEA 1647277v1 55441-4 Davis Wright Tremaine LLP
LAW OFFICES
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I. UNDERLYING MOTIONS

- A. Petitioner's Motion to Compel King County's Production of Voting Records
- B. Petitioner's Motion to Strike WSDCC's Rebuttal Witness List

II. DISCUSSION

A trial court has discretion when ruling a motion to shorten time. See State ex rel. Citizens Against Tolls (CAT) v. Murphy, 151 Wn.2d 226, 236 (2004). A reduction of normal time limits "is permitted as long as there is ample notice and time to prepare." Loveless v. Yantis, 82 Wash.2d 754, 759, 513 P.2d 1023 (1973).

Petitioner seeks to have the Court rule on the Motion to Shorten Time and all underlying motions on Thursday, May 19, 2005, or as soon as the Court deems practicable. If the Motion to Shorten Time is not granted, the two underlying motions would not be noted for the Court's calendar until after trial has commenced. As trial in this election contest is scheduled to begin on May 23, 2005, the normal time limits would preclude the court from deciding on these three essential motions prior to the start of trial.

Noting the underlying motions for Thursday, May 19, 2005 will give WSDCC ample notice and time to prepare a response, if any, to the motions. Furthermore, it will allow a pretrial decision on these essential issues of concern to all parties.

DATED this //// day of May, 2005.

Davis Wright Tremaine LLP Attorneys for Petitioners

Harry J. F. Korrell

WSBA #23173

Robert J. Maguire WSBA #29909

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MOTION- 2

THE HONORABLE JOHN BRIDGES

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF CHELAN

Timothy Borders, Thomas Canterbury, Tom
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Monaghan, and Christopher Vance, Washington
residents and electors, and the Rossi for
Governor Campaign, a candidate committee,

No. 05-2-00027-3

Petitioners,

[PROPOSED]

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ORDER GRANTING PETITIONERS' MOTION TO SHORTEN TIME

King County and Dean Logan, its Director of Records, Elections and Licensing Services, et al.,

Respondents.

and

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Washington State Democratic Central Committee,

Intervenor-Respondent,

and

Libertarian Party of Washington State et al.,

Intervenor-Respondents.

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MOTION- 1 SEA 1647289v1 55441-4

This matter came before the Court on Petitioners' Motion to Shorten Time on May 19, 2005. The Court has considered Petitioners' motion and any opposition.

Davis Wright Tremaine LLP
LAW OFFICES

2600 Century Square + 1501 Fourth Avenue Seattle, Washington 98101-1688 (206) 622-3150 + Fax: (206) 628-7699

1	IT IS HEREBY ORDERED that the Petitioners' Motion to Shorten Time is
2	GRANTED.
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4	DONE IN OPEN COURT this day of, 2005.
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7	JUDGE
8	Presented by:
9) Tresemed by.
10	Davis Wright Tremaine LLP
11	Attorneys for Petitioners
12	1-711 to 1
13	By My Harry J. F. Korrell, WSBA # 23713
14	Robert J. Maguire, WSBA #29909
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF CHELAN

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Huff, Margie Ferris, Paul Elvig, Edward
Monaghan, and Christopher Vance, Washington
residents and electors, and the Rossi for
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Petitioners,

V.

King County and Dean Logan, its Director of Records, Elections and Licensing Services, et al.,

Respondents.

and

Washington State Democratic Central Committee.

Intervenor-Respondent,

and

Libertarian Party of Washington State et al.,

Intervenor-Respondents.

No. 05-2-00027-3

PETITIONERS' MOTION TO STRIKE WSDCC' S REBUTTAL WITNESS LIST

I. RELIEF REQUESTED

Petitioners respectfully request that the Court strike WSDCC's May 13, 2005 rebuttal witness list as untimely and improper.

MOTION-1

SEA 1647276v1 55441-4

Davis Wright Tremaine LLP
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2600 Century Square • 1501 Fourth Avenue Seattle, Washington 98101-1688 (206) 622-3150 • Fax: (206) 628-7699

II. STATEMENT OF ISSUES

Whether the WSDCC's May 13, 2005 list of rebuttal witnesses is untimely and improper, and should therefore be stricken.

III. DISCUSSION

WSDCC has named a total of twenty five (25) individuals as "persons that it may call as rebuttal witnesses at trial." *See* WSDCC's Rebuttal Witness List at 2. However, it is clear from the description of all of the individuals named by WSDCC that the individuals are not intended as rebuttal witnesses, but rather as witnesses who will testify in support of contentions made in WSDCC's May 6, 2005 filing [what is the May 6 filing]. Petitioners move to strike WSDCC's May 13, 2005 "Rebuttal Witness List" as improper and untimely.

WSDCC identifies three classes of witnesses in its May 13 "Rebuttal Witness List," as follows:

[I]ndividuals . . . who "may testify regarding lawful provisional ballots that King County did not count because it failed to completely canvass the ballots or to timely process voter registrations given to King County; lawful absentee ballots that King County did not count even though timely returned by registered voters because King County lost their voter registrations; and lawful provisional ballots that King County did not count because King County's computer system indicated that the voter's registrations had been cancelled and the King County failed to conduct the investigation required by law into the circumstances of the original cancellation."

[I]ndividuals, whose votes where not counted by King County because it failed to completely canvass the ballots or to timely process voter registrations given to King County, may testify regarding the circumstances of the ballots that they cast in the 2004 gubernatorial election, and for whom they cast their ballot.

[I]ndividuals, whose votes were not counted by King County because King County's computer system indicated that the voter's registration had been cancelled and then King County failed to conduct the investigation required by law into the circumstances of the original cancellation, may testify regarding the circumstances of the ballots that they cast in

the 2004 gubernatorial election, and for whom they cast their ballot.

See WSDCC's Rebuttal Witness List at 2-4.

None of the three classes of "rebuttal witnesses" will, in fact, be used by the WSDCC to rebut any of the claims by Petitioners; all the individuals will merely be used as witnesses in support of alleged errors identified by WSDCC. The time is long past for introduction of such witnesses, and WSDCC cannot now re-package primary witnesses as "rebuttal witnesses" to avoid an untimely filing.

Petitioners therefore request that the Court strike the entire list of "rebuttal witnesses" offered by the WSDCC as untimely and improper. WSDCC had ample time to produce such a list on May 6, 2005. Having failed to do so, it should not be allowed to circumvent the entire process by merely re-labeling as "rebuttal witnesses" individuals who are offered to rebut nothing.

DATED this day of May, 2005.

Davis Wright Tremaine LLP Attorneys for Petitioners

Harry J. F. Korrell WSBA #23173 Robert J. Maguire

WSBA #29909

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF CHELAN

Timothy Borders, Thomas Canterbury, Tom Huff, Margie Ferris, Paul Elvig, Edward Monaghan, and Christopher Vance, Washington residents and electors, and the Rossi for Governor Campaign, a candidate committee,

Petitioners,

v.

King County and Dean Logan, its Director of Records, Elections and Licensing Services, et al.,

Respondents.

and

Washington State Democratic Central Committee,

Intervenor-Respondent,

and

Libertarian Party of Washington State et al.,

Intervenor-Respondents.

No. 05-2-00027-3

[PROPOSED] ORDER GRANTING PETITIONERS' MOTION TO STRIKE WSDCC' S REBUTTAL WITNESS LIST

This matter came before the Court on Petitioners' Motion to Strike WSDCC's Rebuttal Witness List on May 19, 2005. The Court has considered Petitioners' motion and any opposition.

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MOTION-1

SEA 1647291v1 55441-4

Davis Wright Tremaine LLP LAW OFFICES 2600 Century Square - 1501 Fourth Avenue Scattle, Washington 98101-1688 (206) 622-3150 - Fax: (206) 628-7699

1	IT IS HEREBY ORDERED that the Petitioners' Motion to Strike WSDCC's
2	Rebuttal Witness List is GRANTED.
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4	DONE IN OPEN COURT this day of, 2005.
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7	JUDGE
8	Presented by:
9	resented by.
10	Davis Wright Tremaine LLP
11	Attorneys for Petitioners
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13	By In S / Wint # 32976
14	Harry J. F. Korrell, WSBA # 23713 Robert J. Maguire, WSBA #29909
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF CHELAN

Timothy Borders, Thomas Canterbury, Tom Huff, Margie Ferris, Paul Elvig, Edward Monaghan, and Christopher Vance, Washington residents and electors, and the Rossi for Governor Campaign, a candidate committee,

Petitioners.

٧.

King County and Dean Logan, its Director of Records, Elections and Licensing Services, et al.,

Respondents.

and

Washington State Democratic Central Committee.

Intervenor-Respondent,

and

Libertarian Party of Washington State et al.,

Intervenor-Respondents.

No. 05-2-00027-3

PETITIONERS' MOTION TO COMPEL

I. RELIEF REQUESTED

Petitioners respectfully request that the Court issue an order to compel King County to produce voting records. Despite numerous written and oral requests from Petitioners, King County has failed to produce many key voting records at issue in this election contest, including poll book pages, absentee envelopes, provisional ballot

MOTION- 1 SEA 1647272v1 55441-4 Davis Wright Tremaine LLP
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Scattle, Washington 98101-1688

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envelopes, and absentee ballot requests. Although reluctant to turn to the Court for resolution of a discovery dispute, Petitioners can no longer wait for these documents.

II. STATEMENT OF ISSUES

Whether King County has fully complied with Petitioner's subpoenas duces tecum dated April 29, 2005, and whether such compliance should now be compelled by the Court.

III. STATEMENT OF RELEVANT FACTS

On April 29, 2005, Petitioners served a subpoena duces tecum on the Records Custodian of King County Records, Elections and Licensing Services ("King County REALS"). Attachment A to the April 29, 2005 subpoena requested that the Records Custodian of King County REALS provide the following documents with respect to the individuals listed in Exhibit 1 to the subpoena:

- 1. All poll book pages from the 2004 General Election containing the names of those individuals listed on the attached Exhibit 1, whether or not a signature appears next to the respective individual's name.
- 2. All absentee ballot envelopes from the 2004 General Election returned by those individuals listed on the attached Exhibit 1.
- 3. All provisional ballot envelopes from the 2004 General Election submitted by those individuals listed on the attached Exhibit 1.

King County REALS was required to produce these documents by May 6 2005. They have failed to produce the requested documents in a timely manner, despite numerous requests from Petitioners that they do so.

At the request of the representative for King County REALS, Petitioners re-served the April 29, 2005 subpoena on May 3, 2005, yet the County's responses remain outstanding.

MOTION-2

IV. ANALYSIS

The county has failed to produce any of the requested records, including the poll book pages, absentee ballot envelopes, and provisional ballot envelopes in a timely manner, and its response is now more than a week overdue.

In general, decisions on discovery requests are within the trial court's discretion. See Doe v. Puget Sound Blood Ctr., 117 Wash.2d 772, 777, 819 P.2d 370 (1991). Trial in this election contest is scheduled to begin on May 23, 2005, and Petitioners can no longer wait for King County REALS to comply with its obligations under the April 29, 2005 subpoena duces tecum.

Petitioners therefore respectfully ask the court to grant this motion to compel production of documents pursuant to Petitioner's April 29, 2005 subpoena duces tecum to King County REALS.

V. RULE 26 CERTIFICATION

Under Rule 26(i), a court may not entertain any motion or objection with respect to Rules 26 through 37 unless "counsel have conferred with respect to the motion or objection. Counsel for the moving or objecting party shall arrange for a mutually convenient conference in person or by telephone."

Petitioners certify through this motion that they have met the Rule 26(i) certification requirements. In addition to numerous other requests to representatives of King County REALS to fulfill its obligations under the April 29, 2005, counsel for Petitioners, Rob Maguire, most recently met and conferred with these representatives on May 16, 2005 with respect to outstanding discovery requests. Petitioners offered to provide King County REALS people to assist with gathering and copying the responsive documents. This offer was declined. Representatives for King County REALS informed Petitioners that King County REALS was unable to provide a date by which they would respond to Petitioners' request. With little time before trial, and in the absence of any

MOTION-3

Davis Wright Tremaine LLP

THE HONORABLE JOHN BRIDGES

5 6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF CHELAN 7

Timothy Borders, Thomas Canterbury, Tom Huff, Margie Ferris, Paul Elvig, Edward Monaghan, and Christopher Vance, Washington residents and electors, and the Rossi for Governor Campaign, a candidate committee.

Petitioners,

v.

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King County and Dean Logan, its Director of Records, Elections and Licensing Services, et al.,)

Respondents.

and

Washington State Democratic Central Committee,

Intervenor-Respondent,

and

Libertarian Party of Washington State et al.,

Intervenor-Respondents.

No. 05-2-00027-3

[PROPOSED] **ORDER GRANTING PETITIONERS' MOTION TO COMPEL KING COUNTY'S** PRODUCTION OF VOTING RECORDS

This matter came before the Court on Petitioners' Motion to Compel King

County's Production of Voting Records on May 19, 2005. The Court has considered

Petitioners' motion and any opposition.

III

MOTION-1

Davis Wright Tremaine LLP LAW OFFICES 2600 Century Square - 1501 Fourth Avenue Scattle, Washington 98101-1688 (236) 622-3150 · Fax: (206) 628-7699

SEA 1647293v1 55441-4

1	IT IS HEREBY ORDERED that the Petitioners' Motion to Compel King County's
2	Production of Voting Records is GRANTED. King County shall fully respond to the
3	subpoenas dated April 29, 2005 within twelve (12) hours of receipt of this order.
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5	DONE IN OPEN COURT this day of, 2005.
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8	JUDGE
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10	Presented by:
11	Davis Wright Tremaine LLP
12	Attorneys for Petitioners
13	
14	By
15	Robert J. Maguire, WSBA #29909
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THE HONORABLE JOHN E. BRIDGES 1 2 3 5 6 7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF CHELAN 8 TIMOTHY BORDERS, et al., 9 No. 05-2-00027-3 Petitioners, 10 DECLARATION OF E-FILING 11 V, AND SERVICE KING COUNTY, et al. 12 Respondents. 13 and 14 WASHINGTON STATE DEMOCRATIC 15 CENTRAL COMMITTEE, 16 Intervenor-Respondent, 17 And 18 Libertarian Party of Washington State et al., 19 Intervenor-Respondents. 20 DONNA L. ALEXANDER states as follows: 21 1. I am over the age of 18 years and am not a party to the within cause. 22 2. I am employed by the law firm of Davis Wright Tremaine LLP. My 23 business and mailing addresses are 2600 Century Square, 1501 Fourth Avenue, Seattle, 24 Washington 98101-1688. 25 26 27

CERTIFICATE OF SERVICE - 1 SEA 1647723v1 55441-4

Davis Wright Tremaine LLP LAW OFFICES 600 Century Square + 1501 Fourth Avenue Seattle, Washington 98101-1688 (206) 622-3150 + Fax. (206) 628-7699

Gary Riesen

Chelan County Prosecuting Attorney PO Box 2596 Wenatchee WA 98807-2596

Barnett N. Kalikow, Esq.

For: Klickitat County Auditor Kalikow & Gusa PLLC 1405 Harrison Avenue NW, Suite 207 Olympia WA 98502

Gorden Sivley Michael C. Held

Snohomish County Deputy Prosecuting Attorneys 2918 Colby Avenue, Suite 203 Everett WA 98201-4011

L. Michael Golden

Lewis County Senior Deputy Prosecuting Attorney 345 West Main Street Chehalis WA 98532

Jeffrey T. Even, Asst. Attorney General

For: Secretary of State Sam Reed Attorney General's Office PO Box 40100 Olympia WA 98504-0100

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 16th day of May, 2005, at Seattle, Washington.

Donna L. Alexander